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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,975	10/21/2003	Jay S. Walker	02-081	4444
22927	7590	04/28/2009	EXAMINER	
WALKER DIGITAL MANAGEMENT, LLC			HSU, RYAN	
2 HIGH RIDGE PARK			ART UNIT	PAPER NUMBER
STAMFORD, CT 06905			3714	
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			04/28/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/689,975	<b>Applicant(s)</b> WALKER ET AL.	
	<b>Examiner</b> RYAN HSU	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

In response to the amendments filed on 2/20/09, claims 1, 20, 40, 42-44 have been amended. Claims 1-44 are pending in the current application.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb (US 6,632,141 B2) and Feinberg (US 5,851,010) and further in view of Baerlocher et al. (US 6,506,118 B1).**

Regarding claims 1-28, 31-37, and 39-44, Webb teaches a method comprising receiving at a gaming device a wager for initiating a game play of a game wherein the game play comprises a predetermined number of rounds of the game and wager is an amount sufficient to pre-pay for the predetermined number of rounds (*ie: the players wager and a predetermined event enters into the bonus game*). Additionally, Webb teaches prior to the bonus game an initial balance of winnings (*ie: winnings of the primary game*) wherein the initial balance of winnings is greater than the amount of the wager (*see Fig. 3(a-i) and the respective related description thereof*). Additionally, Webb teaches establishing a credit meter balance that is distinct from the initial balance of winnings and determining a predetermined number of outcomes the predetermined number of outcomes comprising at least one respective outcome for each of the predetermined rounds (*ie: number of picks = rounds in the game*) (*see Figs. 3(a-b) and the*

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*respective related description thereof*). Furthermore, Webb teaches that at least one of the outcomes of the predetermined number of outcomes comprises an outcome that grants a privilege to the player wherein the privilege comprises at least one of: permission to avoid an effect of an outcome of the determined outcomes; a reduction in the predetermined number of rounds; and an increase in the final balance of winnings (*see anti-terminators [168] of Fig. 3(a-i) and the respective related description thereof*). The privilege taught in Webb also has the limitation of being applied to the game play at the time the privilege is obtained and in response to a command from the player to do so wherein the privilege has associated therewith at least one constraint comprising at least one of: a) a predetermined number of rounds (*see pick(s) remaining [164]*), from a round within which the privilege is obtained, within which the privilege must be applied; b) a predetermined number of game plays, from a game play within which the privilege is obtained, within which the privilege must be applied; or c) a predetermined period of time, from a time at which the privilege was obtained, within which the privilege must be applied. It is also noted that in Webb the privilege is stored on an indication meter with an identifier of the player for future use by the player (*see anti-terminators [168]*). Webb further teaches that the at least one of the outcomes causes the current balance of winnings to be stored and accessed by game machine to choose from a plurality of obtainable outcomes where each of the obtainable outcomes corresponds to a respective effect on the game play (*see col. 6: ln 25-col. 9: ln 15*). The effects of Webb's game have at least one outcome that causes the player to obtain an outcome that is less than the initial offer. This causes the current balance of winnings to be less than the initial balance of winnings. The different effects on the game play taught in Webb are to provide an entertaining journey to determine a final balance of

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winnings that will be made to the player. While Webb allows the player to cash out the current balance of winnings before the number of rounds has been concluded he does provide the provision that if the rounds have ended and the player has not cashed out they are left with the final offer. Providing a player with the inability to cash out is simply a matter of DESIGN CHOICE and would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate such a feature. It would cause the expected result of forcing a player to continue playing all the way through the games. Although the applicant's limitations only require for a predetermined number of rounds to be played for a predetermined amount which could be one round or a single pay per play type game, Webb is silent with respect to playing a plurality of rounds with one payment.

In a related gaming patent, Feinberg teaches a method of playing a game where a player is tracked with a connection of a game and is asked to pay for a plurality of gaming outcomes of decisions based upon one wager (*see Fig. 3-4 and the related description thereof*). Feinberg teaches a flat pay rate for a predetermined number of outcomes in the gaming device and generates an award as a result of the plurality of outcomes (*see Fig. 1 and the related description thereof*). One would be motivated to incorporate such a feature in Feinberg with that of Webb in order to provide a simple betting format that would allow a player to concentrate on the outcome and events that are occurring in the game without having to continually place credits into a machine. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the betting method of Feinberg with that of Webb to provide a plurality of rounds or outcomes in the game as a result of a single fee. However, Webb and

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Feinberg are silent with respect to providing a game play that ends with the player winning a fractional amount.

In a related gaming patent, Baerlocher teaches an offer/acceptance game that introduces award modifiers. The modifiers in Baerlocher can take the form of a positive or negative modifier. When a player selects a negative modifier it reduces the award to a fractional amount of what it was before (*ie: -1 = -25 credits*) (*see col. 8: ln 5-52*). One would be motivated to incorporate such a feature as it provides the player with the excitement of risking the award for greater gains. As taught in Baerlocher the game may be adjusted to offer higher awards for potentially higher risk and therefore would be more exciting for the user. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Webb with the teachings of Baerlocher to provide a negative modifier and therefore a fractional result in a game.

Regarding claims 29-30, Webb teaches a game the comprises automatically initiating during the predetermined amount of time, rounds of the game a predetermined rate (*ie: 3 picks at a time*). Additionally, the method determined a number of outcomes comprising receiving from the player a command to initiate a round of the game and determining an outcome in response to the command (*ie: the player makes a pick and then an outcome is generated*) (*see Figs. 3(a-e) and the respective related description thereof*).

Regarding claim 38, Baerlocher teaches a method wherein adjusting the initial balance of winnings comprises determining based on at least one of the determined outcomes, that adjusting the initial balance of winnings would result in a negative balance of winnings and setting the

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current balance of winnings to be zero (*see Figs. 3-4 and the respective related description thereof*).

### ***Response to Arguments***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN HSU whose telephone number is (571)272-7148. The examiner can normally be reached on 9 :00-17:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hotaling can be reached on (571)272-4437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John M Hotaling II/  
Supervisory Patent Examiner, Art Unit 3714

RH  
April 27, 2009